

BEFORE THE COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS
STATE OF NEVADA

JOSEPH (JD) DECKER, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY, STATE OF
NEVADA,

Case No. IN-1608

Petitioner,

vs.

SIERRA RANCHOS PROPERTY
OWNERS ASSOCIATION; ROGER
SEIFERT; SCOTT DALMAN; SCOTT
CROW; BRENT JOHNSON; and RON WIX,

Respondents.

FILED

OCT 06 2015

NEVADA COMMISSION OF
COMMON-INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

**COMPLAINT FOR DISCIPLINARY
ACTION AND NOTICE OF HEARING**

The Real Estate Division of the Department of Business and Industry, State of Nevada ("the Division"), by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby notifies Respondents SIERRA RANCHOS PROPERTY OWNERS ASSOCIATION; ROGER SEIFERT; SCOTT DALMAN; SCOTT CROW; BRENT JOHNSON; and RON WIX (collectively, the "RESPONDENTS") of an administrative hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B and Chapter 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if an administrative penalty will be imposed on the RESPONDENTS pursuant to the provisions of NRS and NAC including, but not limited to, NRS 116.785 and NRS 116.790.

JURISDICTION AND NOTICE

1. ROGER SEIFERT, SCOTT DALMAN, SCOTT CROW, BRENT JOHNSON, and RON WIX (the "BOARD") were at all relevant times mentioned in this complaint and are

1 currently members of the executive board for SIERRA RANCHOS PROPERTY OWNERS
2 ASSOCIATION (the "ASSOCIATION") located in Reno, State of Nevada.

3 2. The BOARD and the ASSOCIATION are subject to the provisions of Chapter
4 116 of both the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code
5 ("NAC") and are subject to the jurisdiction of the Division, and the Commission for Common
6 Interest Communities and Condominium Hotels pursuant to the provisions of NRS 116.750.

7 **FACTUAL ALLEGATIONS**

8 3. The Sierra Ranchos Property Owners Association (the "ASSOCIATION") was
9 created in 1974 and governs 212 lots which are all approximately 10 or more acres in size and
10 located in Reno, Nevada.

11 4. The Association is self-managed.

12 5. On or about July 10, 2012, a homeowner within the ASSOCIATION, Greta
13 Anderson, filed an Intervention Affidavit against the ASSOCIATION and the BOARD.

14 6. Ms. Anderson alleged retaliation and selective enforcement of the governing
15 documents in violation of NRS 116.

16 7. Ms. Anderson provided evidence of a dispute between herself and her neighbor,
17 RESPONDENT BRENT JOHNSON.

18 8. Beginning in 2010, RESPONDENT JOHNSON made complaints about Ms.
19 Anderson's horses and dogs on the north side of her property to the Washoe County Regional
20 Animal Services, the Washoe County Department of Public Works, the Washoe County
21 Sheriff's Department, and BLM – Department of the Interior.

22 9. RESPONDENT JOHNSON'S property is on the north side of Ms. Anderson's
23 property.

24 10. Beginning on or about August 26, 2011, RESPONDENT JOHNSON began
25 making complaints to the Washoe County Regional Animal Service and recorded a hand
26 written complaint nearly every day until the end of October 2011.

27 11. Ms. Anderson moved her horses to the south side of her property due to
28 RESPONDENT JOHNSON'S complaints.

1 12. RESPONDENT JOHNSON became a board member in November 2011 when
2 the board decided after he was elected that he would fill a vacancy on the board until his
3 official term began.

4 13. At the November 2011 meeting where RESPONDENT JOHNSON was
5 appointed to the board, the board directed him and RESPONDENT WIX to investigate a
6 complaint filed by owners about their neighbor putting 55 gallon drums along the fence line.

7 14. In RESPONDENT JOHNSON'S report regarding the complaint he concluded
8 there were over 80 steel and plastic drums being placed at the owner's fence line which he
9 stated would be a violation of the CC&R's Section 3.09.

10 15. Section 3.09 requires removal of rubbish and debris which is defined as "items
11 of trash that are offensive by sight or smell to owners of neighboring Lots or other members of
12 the association."

13 16. RESPONDENT JOHNSON called the complaining owner informing him that the
14 board "has not historically taken a position that [he] was aware of regarding CC&R violations
15 regarding section 3.09."

16 17. RESPONDENT JOHNSON'S report goes on to say there are much more
17 egregious violators.

18 18. RESPONDENT JOHNSON recommended that the board take no action on the
19 complaint, and the board took no action on the complaint.

20 19. On March 12, 2012, Ms. Anderson filed an application for an order for protection
21 against stalking, aggravated stalking or harassment against RESPONDENT JOHNSON.

22 20. Ms. Anderson alleged that RESPONDENT JOHNSON was verbally abusive and
23 threatening to her, fired his guns and shoots air horns to incite her animals, and videotapes
24 her.

25 21. On March 15, 2012, RESPONDENT JOHNSON made a written complaint to the
26 ASSOCIATION that Ms. Anderson's horse shelters did not comply with the 60' setback
27 requirement in the ASSOCIATION'S governing documents and that she erected a used
28 building structure.

1 22. The horse shelters RESPONDENT JOHNSON complained about were located
2 on the south side of Ms. Anderson's property.

3 23. According to the Association's minutes from the hardship hearing, one shelter
4 was about 30 feet from the property line, and one was about 33 feet away from the property
5 line.

6 24. Along the south side of Ms. Anderson's property is several acres of vacant
7 property.

8 25. On April 11, 2012, Ms. Anderson received a restraining order against
9 RESPONDENT JOHNSON which was extended for a year to expire on April 11, 2013.

10 26. The Extended Order for Protection Against Stalking, Aggravated Stalking, or
11 Harassment prohibits RESPONDENT JOHNSON from the following:

- 12 a. Going on Ms. Anderson's property;
- 13 b. Making a video of Ms. Anderson;
- 14 c. Firing any weapon on his property unless to defend himself or his animals;
- 15 d. Stopping on the street in front of or along the side of Ms. Anderson's property;
- 16 and
- 17 e. Vilifying, defaming or calling Ms. Anderson names or otherwise speaking of her
- 18 in a derogatory manner.

19 27. On or about May 24, 2012, the ASSOCIATION authorized its counsel, Gayle
20 Kern, to send a letter to Ms. Anderson that her horse shelters complained about by
21 RESPONDENT JOHNSON are within the 60' setback requirement of the CC&R's and must be
22 moved.

23 28. Ms. Anderson complained to the ASSOCIATION that the setback requirement
24 was only being enforced against her and no other owner with structures within the 60'
25 setback.

26 29. Ms. Anderson requested the ASSOCIATION grant her a hardship exemption
27 from the 60' setback requirement based on her property's unique propensity for high levels of
28 standing water during certain times of the year.

1 30. Ms. Anderson requested copies of all minutes from board meetings multiple
2 times in 2012.

3 31. By letter dated April 2, 2012, the Association states it cannot provide minutes
4 from the board's February 2012 meeting as they were not yet completed.

5 32. By letter dated June 14, 2012, the Association's attorney sent Ms. Anderson a
6 notice of violation for the horse shelters within the 60-foot setback. No hearing date was set
7 and no possible fine amount was stated in the notice.

8 33. The Association provided Ms. Anderson the minutes in draft form from the
9 February 16, 2012 meeting by letter dated August 6, 2012. The Association never provided
10 Ms. Anderson the final copy of the minutes for the February 16, 2012 board meeting.

11 34. By letter dated August 16, 2012, the Association notified Ms. Anderson of a
12 hearing on her request for a hardship exemption. No possible fine amount is included in the
13 letter.

14 35. The ASSOCIATION held a hearing on September 12, 2012 for Ms. Anderson's
15 hardship exemption request.

16 36. At the hearing, Ms. Anderson explained how portions of her property are under
17 water during certain times of the year and the horse shelters are located on the driest portion.

18 37. Ms. Anderson provided pictures of her property after rainfall and a letter from a
19 Washoe County Engineering Inspector who said he saw standing water on the property and
20 that the horse shelters were moved to keep the horses from standing in water. He added that
21 the Engineering Department had no requirements for where she puts the horse shelters.

22 38. Ms. Anderson also referenced properties with other violations of the CC&R's
23 including board members, RESPONDENTS RON WIX, who had junk on this property, and
24 BRENT JOHNSON, who had inoperable vehicles and barrels on his property.

25 39. Ms. Anderson asserted at the hearing that the restrictions cannot be enforced in
26 an arbitrary or capricious manner.

27 40. By letter dated September 23, 2012, the ASSOCIATION notified Ms. Anderson
28 that her hardship exemption request was denied.

1 41. The ASSOCIATION'S letter states that "[t]he extenuating circumstances you
2 asserted do not rise to the level of the requirements identified in Article III, Section 3.01."

3 42. The ASSOCIATION'S letter continues to state: "Nevada law requires that the
4 [ASSOCIATION] enforce the governing documents."

5 43. By letter dated November 30, 2012, the ASSOCIATION again notified Ms.
6 Anderson that her hardship exemption was denied and added that she had 30 days to move
7 the shelters out of the setback otherwise she would be fined \$100 per day until the violation
8 was corrected.

9 44. No letter provided to Ms. Anderson prior to the hardship hearing stated a fine
10 amount for the alleged violation.

11 45. By letter dated June 5, 2013, the ASSOCIATION'S attorney notified Ms.
12 Anderson that a fine in the amount of \$17,825 was then due and owing based on her alleged
13 failure to move her horse shelters outside the 60' setback.

14 46. By email dated June 22, Ms. Anderson informed the ASSOCIATION'S attorney
15 that she had complied with the demand of the ASSOCIATION'S board to move her horse
16 shelters.

17 47. Ms. Anderson also provided to the attorney a table identifying over 30 properties
18 within the ASSOCIATION that have structures, including some homes, within the 60' setback
19 based on an aerial view of the properties.

20 48. The table was created by Don Jeppson, the Director of the Washoe County
21 Building and Safety Department, using aerial photographs of the property.

22 49. The ASSOCIATION took no action against the properties identified in the table
23 provided by Ms. Anderson.

24 50. On or about November 8, 2013, the ASSOCIATION sent Ms. Anderson a
25 statement of her account dated October 30, 2013 which included regular road assessments in
26 addition to a fine in the amount of \$17,600, a fine in the amount of \$2,400, and interest and
27 late fees in the amount of \$1,075.51 on the fines.
28

1 51. By letter dated March 21, 2014, the ASSOCIATION'S attorney informed Ms.
2 Anderson that the fines, fees and interest were waived, but for \$100 and acknowledges that
3 the setback violation was corrected.

4 52. During the Division's investigation into Ms. Anderson's allegations of selective
5 enforcement, the ASSOCIATION was asked to provide a complete record of disciplinary
6 action taken against any owner.

7 53. As of October 28, 2014, the complete list of disciplinary action contains two
8 owners, Ms. Anderson for the setback requirements dated March 2012, and one other owner
9 who built an animal shelter before building the main residence in June 2012.

10 54. The same owner who was forced to comply with the CC&R's in June of 2012
11 filed an application for a protective order against RESPONDENT JOHNSON in 2014.

12 55. Ms. Anderson was the first owner in the ASSOCIATION to have any disciplinary
13 action taken against her.

14 56. No other owner within the ASSOCIATION has ever been forced to comply with
15 the 60' setback requirement despite the fact that there are several properties with structures
16 within the setback.

17 57. The ASSOCIATION granted a hardship exemption to an owner for having a
18 horse shelter in front of the home and along the fence line on February 18, 2014 without
19 explanation.

20 VIOLATIONS OF LAW

21 58. RESPONDENT JOHNSON knowingly and willfully violated NRS 116.3103
22 (through NAC 116.405(2)) by failing to act in accordance with his fiduciary duty to act in good
23 faith by acting out of reasons of self-interest, gain, prejudice or revenge by filing a complaint
24 with the ASSOCIATION against his neighbor after she applied for a restraining order against
25 him and while as a board member he discouraged the ASSOCIATION from enforcing the
26 governing documents for a complaint filed by another owner.

27 59. RESPONDENTS SEIFERT, DALMAN, CROW and WIX knowingly and willfully
28 violated NRS 116.3103 (through NAC 116.405(2)) by failing to act in accordance with their
fiduciary duty to act in good faith by acting out of reasons of self-interest, gain, prejudice or

1 revenge when they forced Ms. Anderson to move her horse shelters to comply with a 60'
2 setback while at the same time failing to pursue any other owner for the same violation.

3 60. RESPONDENTS SEIFERT, DALMAN, CROW and WIX knowingly and willfully
4 violated NRS 116.3103 (through NAC 116.405(3)) by failing to act in accordance with their
5 fiduciary duty to act in good faith by committing an act or omission with amounts to
6 incompetence, negligence or gross negligence by enforcing the governing documents against
7 a single owner and no other owner.

8 61. RESPONDENTS SEIFERT, DALMAN, CROW, JOHNSON and WIX knowingly
9 and willfully violated NRS 116.3103 (through NAC 116.405(8)(b)) by failing to act in
10 accordance with their fiduciary duty to act in good faith by failing to cause the ASSOCIATION
11 to uniformly enforce the governing documents.

12 62. RESPONDENTS violated NRS 116.31031(4)(b) by failing to include the fine
13 amount in the notice of the alleged violation or the notice of a hearing.

14 63. RESPONDENTS violated NRS 116.31031(11) by imposing interest charges on
15 the fine as evidenced by a statement dated October 30, 2013 the ASSOCIATION sent to Ms.
16 Anderson.

17 64. RESPONDENTS violated NRS 116.310315 by failing to establish a separate
18 compliance account for the fine charged to Ms. Anderson as evidenced by a statement dated
19 October 30, 2013 the ASSOCIATION sent to Ms. Anderson.

20 65. RESPONDENTS violated NRS 116.31083(7) by failing to have minutes of board
21 meetings available to unit owners within 30 days of the meeting when minutes for the board
22 meeting in February 2012 could not be provided to Ms. Anderson until August 2012 and then
23 only in draft form.

24 DISCIPLINE AUTHORIZED

25 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
26 116.790 the Commission has discretion to take any or all of the following actions:

- 27 1. Issue an order directing RESPONDENTS to cease and desist from continuing to
28 engage in the unlawful conduct that resulted in the violation.

2. Issue an order directing RESPONDENTS to take affirmative action to correct any conditions resulting from the violation.
3. Impose an administrative fine of up to \$1,000 for each violation by RESPONDENTS.
4. IF ANY RESPONDENTS ARE FOUND TO HAVE KNOWINGLY AND WILLFULLY COMMITTED A VIOLATION of Chapter 116 AND it is in the best interest of the Association, such RESPONDENTS may be removed from their positions as directors and/or officers.
5. Require RESPONDENTS to pay the costs of the proceedings incurred by the Division, including, without limitation, the cost of the investigation and reasonable attorney's fees.
6. Take whatever further disciplinary action as the Commission deems appropriate.

The Commission may order one or any combination of the discipline described above. If the Commission finds that the RESPONDENTS knowingly and willfully violated the provisions of Chapter 116, the Commission may order that RESPONDENTS be personally liable for all fines and costs imposed.

NOTICE OF HEARING

PLEASE TAKE NOTICE, that a disciplinary hearing has been set to consider this Administrative Complaint against the above-named RESPONDENTS in accordance with Chapters 233B and 116 and 116A of the Nevada Revised Statutes and Chapters 116 and 116A of the Nevada Administrative Code.

THE HEARING WILL TAKE PLACE on November 17-19, 2015, beginning at 9:00 a.m. each day or until such time as the Commission concludes its business. The Commission meeting on November 17, 2015, will be located at the Nevada State Gaming Control Board, 1919 College Parkway, Carson City, Nevada 89706, with videoconferencing to the Nevada State Gaming Control Board at the Grant Sawyer Building, 555 E. Washington Ave., Room 2450, Las Vegas, Nevada 89101. The Commission meeting on November 18 and 19, 2015, will be located at the State of Nevada, Department of Business and Industry, Division of Insurance, 1818 East College Parkway, 1st floor Hearing Room, Carson City, Nevada 89706,

1 with videoconferencing to the Department of Business and Industry, 2501 E. Sahara Avenue,
2 2nd Floor Conference Room, Las Vegas Nevada 89104.

3 STACKED CALENDAR: Your hearing is one of several hearings that may be
4 scheduled at the same time as part of a regular meeting of the Commission that is expected to
5 take place on November 17-19, 2015. Thus, your hearing may be continued until later in the
6 day or from day to day. It is your responsibility to be present when your case is called. If you
7 are not present when your hearing is called, a default may be entered against you and the
8 Commission may decide the case as if all allegations in the complaint were true. If you need
9 to negotiate a more specific time for your hearing in advance because of coordination with out
10 of state witnesses or the like, please call Claudia Rosolen, Commission Coordinator, at (702)
11 486-4606.

12 YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is an
13 open meeting under Nevada's open meeting law, and may be attended by the public. After
14 the evidence and arguments, the commission may conduct a closed meeting to discuss your
15 alleged misconduct or professional competence. A verbatim record will be made by a certified
16 court reporter. You are entitled to a copy of the transcript of the open and closed portions of
17 the meeting, although you must pay for the transcription.

18 As a RESPONDENT, you are specifically informed that you have the right to appear
19 and be heard in your defense, either personally or through your counsel of choice. At the
20 hearing, the Division has the burden of proving the allegations in the complaint and will call
21 witnesses and present evidence against you. You have the right to respond and to present
22 relevant evidence and argument on all issues involved. You have the right to call and
23 examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter
24 relevant to the issues involved.


25 You have the right to request that the Commission issue subpoenas to compel
26 witnesses to testify and/or evidence to be offered on your behalf. In making this request, you
27 may be required to demonstrate the relevance of the witness' testimony and/or evidence.
28 Other important rights and obligations, including your obligation to answer the complaint, you

1 have are listed in NRS Chapters 116 and 116A and NAC 116 and 116A, including without
2 limitation, NRS 116.770 through 116.780, and NAC 116.500 through NAC 116.635 and NRS
3 Chapter 233B.

4 Note that under NAC 116.575, not less than five (5) working days before a hearing,
5 RESPONDENTS, and each of them, must provide to the Division a copy of all reasonably
6 available documents that are reasonably anticipated to be used to support his or her position,
7 and a list of witnesses RESPONDENTS, and each of them, intend to call at the time of the
8 hearing. Failure to provide any document or to list a witness may result in the document or
9 witness being excluded from a RESPONDENT'S defense. The purpose of the hearing is to
10 determine if the RESPONDENTS or any of them have violated the provisions of Chapter 116,
11 and to determine what administrative penalty is to be assessed against RESPONDENTS.

12 DATED this 5th day of October, 2015.

13
14 REAL ESTATE DIVISION
15 DEPARTMENT OF BUSINESS & INDUSTRY
16 STATE OF NEVADA

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